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January 18, 2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: August 21, 2007

Case Number: TSO-0533

This decision concerns the eligibility of XXXXXXXXX (hereinafter referred to as "the Individual") to have his access authorization restored under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ For the reasons set forth below, I conclude that the Individual's access authorization should not be restored.

I. BACKGROUND

On May 6, 2006, the Individual was arrested and charged with "Aggravated Driving a Motor Vehicle While Under the Influence of Liquor and/or Drugs." The Individual had been arrested for alcohol-related offenses on at least two prior occasions: in April 1981, he was charged with Driving While Intoxicated (DWI) and in March 1983, he was again charged with DWI. This information raised substantial doubts about the Individual's eligibility to maintain a DOE access authorization. Moreover, the Individual had previously submitted two Questionnaires for National Security Positions (QNSP) and four Questionnaires for Sensitive Positions (QSP) in which he had failed to disclose the 1983 DWI. The Individual had also been arrested on three other occasions: on September 3, 1981, he was charged with Battery; on November 12, 1988, he was charged with Involuntary Manslaughter, Negligent Use of a Firearm, and Illegal Use of Artificial Light; and in September 1999 he was charged with Illegal Cutting of Firewood. Accordingly, a Personnel Security Interview (PSI) of the Individual was conducted on November 15, 2006.² This PSI failed to resolve the security concerns raised by this information. The Individual was then asked to submit to an examination by a DOE Psychiatrist.

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

² The transcript of this PSI appears in the record as DOE Exhibit 5. In addition, the record contains that transcript of a PSI conducted on August 17, 1993. The August 17, 1993 PSI Transcript appears in the record as DOE Exhibit 6.

On January 23, 2007, the DOE Psychiatrist conducted a forensic psychiatric examination of the Individual. The DOE Psychiatrist also reviewed selected portions of the Individual's security file. On January 24, 2007, the DOE Psychiatrist issued a report in which he stated that the Individual met the criteria for alcohol abuse set forth in Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Text Revised (DSM-IV-TR). DOE Psychiatrist's Report of Examination at 7. Observing that the Individual continued to use alcohol, the DOE Psychiatrist further opined that the Individual was not sufficiently rehabilitated or reformed to resolve the security concerns raised by his alcohol abuse. *Id.* at 9-10.³

The Local Security Office (LSO) subsequently concluded that the Individual failed to resolve the substantial doubts about his eligibility for a DOE access authorization raised by his alcohol abuse diagnosis, failure to provide accurate information about his arrest record, and criminal record. Accordingly, an administrative review proceeding was initiated. *See* 10 C.F.R. § 710.9. The LSO issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter). The Notification letter alleges that the Individual has:

- (1) Deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, . . . on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to Sec. 710.20 through Sec. 710.31, 10 C.F.R. § 710.8(f) (Criterion F),
- (2) Engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security . . . 10 C.F.R. § 710.8(l) (Criterion L), and
- (3) Been, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse, 10 C.F.R. § 710.8(j) (Criterion J).

The Individual filed a request for a hearing in which he made a general denial of the allegations contained in the Notification Letter. This request was forwarded to the Director of the Office of Hearings and Appeals (OHA), who appointed me as Hearing Officer.

At the hearing, the LSO presented one witness: the DOE Psychiatrist. The Individual presented

³ The DOE Psychiatrist opined that in order to establish rehabilitation or reformation from his alcohol abuse, the Individual must undergo out patient treatment of at least moderate intensity. The treatment program should include abstinence from alcohol and be of at least one year's duration. DOE Psychiatrist's Report of Examination at 10.

no witnesses. However, the Individual testified on his own behalf. *See* Transcript of Hearing, Case No. TSO-0533 (hereinafter cited as “Tr.”).

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. FINDINGS OF LAW AND FACT

A. Criterion F

The Individual omitted the 1983 DWI in QNSPs that he submitted on February 14, 2007, and September 12, 2001, and on QSPs he submitted on February 28, 1995, November 16, 1994, July 27, 1993 and September 15, 1992. Accordingly, the LSO properly invoked Criterion F.

A finding of derogatory information does not, however, end the evaluation of evidence concerning the individual's eligibility for access authorization. *See Personnel Security Hearing (Case No. VSO-0244)*, 27 DOE ¶ 82,797 (affirmed by OSA, 1999); *Personnel Security Hearing (Case No. VSO-0154)*, 26 DOE ¶ 82,794 (1997), *aff'd*, *Personnel Security Review (Case No. VSA-0154)*, 27 DOE ¶83,008 (affirmed by OSA, 1998). In the end, like all Hearing Officers, I must exercise my common sense judgment in determining whether an individual's access authorization should be granted after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c). Therefore, I must consider whether the Individual has submitted sufficient evidence of mitigation to resolve the security concerns raised by his omission.

In the present case, the Individual has, during the PSIs, attributed his failure to disclose the 1983 DWI to a lapse of memory. The Individual also testified at the hearing that the omission of the 1983 DWI was an “honest mistake.” Tr. at 34. A careful review of the security disclosure forms shows that the Individual quite candidly supplied a great deal of derogatory information, including all his other prior arrests, in his answers to the questions propounded in the security disclosure forms. Accordingly, based on my assessment of the Individual's testimony and his

demeanor at the hearing, I find that the Individual did not intend to deceive the DOE when he omitted the 1983 DWI from the security disclosure forms he submitted. Therefore, the security concerns set forth in the Notification Letter under Criterion F have been sufficiently mitigated.

B. Criterion L

In addition to three alcohol-related arrests, the Individual has been arrested for Illegal Cutting of Firewood, Battery, Involuntary Manslaughter, Negligent Use of a Firearm, and Illegal Use of Artificial Light.

The Individual's willingness to blatantly disobey the law on a recurrent basis raises grave doubts about his judgment, reliability and trustworthiness. Such conduct shows a disregard for law, an inability or unwillingness to adhere to rules and regulations, as well as an inability to exercise good judgment. *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued by the Assistant to the President for National Security Affairs, The White House (December 29, 2005) (Adjudicative Guidelines) at Guideline J.* Accordingly, the LSO properly invoked Criterion L. The Individual failed to submit any evidence or offer any testimony mitigating the security concerns raised by his criminal record. That record shows a pattern of criminal misconduct by the Individual since 1981. Since there is no evidence that the security concerns raised by the Individual's misconduct have been mitigated by time or any other factor, they remain unresolved.

C. Criterion J

A reliable diagnosis of alcohol abuse raises significant security concerns under Criterion J. *See, e.g., Personnel Security Hearing, Case No. VSO-0079, 25 DOE ¶ 82, 803 (affirmed by OSA, 1996); Personnel Security Hearing, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); Personnel Security Hearing, Case No. VSO-0014, 25 DOE ¶ 82,755; aff'd, Personnel Security Review, 25 DOE ¶ 83,002 (affirmed by OSA, 1995).* In these proceedings, Hearing Officers have found that an individual's excessive use of alcohol might impair his judgment and reliability, and his ability to control impulses. These factors amplify the risk that an individual will fail to safeguard classified matter or special nuclear material.

In the present case, the Individual disputes the DOE Psychiatrist's diagnosis of alcohol abuse. Tr. at 37. The Individual indicated that he did not believe he had a drinking problem "because I've gone through periods without it." Tr. at 36. The Individual further testified that he had been screened for substance abuse problems and that the results of that screening did not indicate that he had problems with alcohol or any other drug. Tr. at 33. Most importantly, however, the Individual admitted that he is still drinking. Tr. at 31.

The DOE Psychiatrist testified that he had diagnosed the Individual with alcohol abuse. Tr. at 6. He explained that the DSM-IV lists four criteria for an alcohol abuse diagnosis, and if any of these four criteria are met, the Individual meets the criteria for alcohol abuse. *Id.* The DOE Psychiatrist persuasively testified that the Individual met two of the four criteria. *Id.*

Specifically, the DOE Psychiatrist testified that the Individual recurrently used alcohol in situations in which it was physically hazardous and had experienced recurrent alcohol-related legal problems, both of which are evidenced by the Individual's multiple DWI arrests. Tr. at 6-7. The DOE Psychiatrist testified that the Individual had neither shown rehabilitation nor reformation of his alcohol use, since he did not acknowledge that he had a problem with alcohol and continues to use alcohol.

I am persuaded by the DOE Psychiatrist's testimony, that the Individual has been properly diagnosed with alcohol abuse and continues to use alcohol. Therefore, I find that he has not demonstrated rehabilitation or reformation from his alcohol abuse, or mitigated the security concerns attendant to his alcohol-related arrests. Accordingly, I find that he has not resolved the security concerns raised under Criterion J.

IV. CONCLUSION

For the reasons set forth above, I conclude that the Individual has resolved the security concerns raised under Criterion F. However, he has not resolved the security concerns raised under Criteria J and L. Therefore, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the Individual's access authorization should not be restored. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: January 18, 2008